

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

RICKY L. MINCHEW,

Plaintiff,

v.

KYLE WALT, *et al.*,

Defendants.

Case No. 3:16-cv-00326-MMD-VPC

ORDER

This action is a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a former state prisoner. On January 25, 2017, this Court issued an order denying the application to proceed *in forma pauperis* for prisoners as moot because Plaintiff was no longer incarcerated. (ECF No. 5 at 2.) The Court ordered Plaintiff to file a fully complete application to proceed *in forma pauperis* for non-prisoners or pay the full filing fee of \$400.00 on or before February 24, 2017. (*Id.*) The Court also directed Plaintiff to file his updated address with the Court on or before February 24, 2017. (*Id.*) The deadline has now expired, and Plaintiff has not filed an application to proceed *in forma pauperis* for non-prisoners, paid the full filing fee, updated his address, or otherwise responded to the Court's order.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules.

1 See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance  
 2 with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for  
 3 failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856  
 4 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring  
 5 *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833  
 6 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order); *Henderson*  
 7 *v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and  
 8 failure to comply with local rules).

9 In determining whether to dismiss an action for lack of prosecution, failure to obey  
 10 a court order, or failure to comply with local rules, the court must consider several factors:  
 11 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to  
 12 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring  
 13 disposition of cases on their merits; and (5) the availability of less drastic alternatives.  
 14 *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130;  
 15 *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

16 In the instant case, the Court finds that the first two factors, the public's interest in  
 17 expeditiously resolving this litigation and the Court's interest in managing the docket,  
 18 weigh in favor of dismissal. The third factor, risk of prejudice to Defendants, also weighs  
 19 in favor of dismissal, since a presumption of injury arises from the occurrence of  
 20 unreasonable delay in filing a pleading ordered by the court or prosecuting an action. See  
 21 *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor — public policy  
 22 favoring disposition of cases on their merits — is greatly outweighed by the factors in  
 23 favor of dismissal discussed herein. Finally, a court's warning to a party that his failure to  
 24 obey the court's order will result in dismissal satisfies the "consideration of alternatives"  
 25 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d  
 26 at 1424. The Court's order requiring Plaintiff to file an application to proceed *in forma*  
 27 *pauperis* for non-prisoners or pay the full filing fee and file an updated address on or  
 28 before February 24, 2017, expressly stated: "IT IS FURTHER ORDERED that, if Plaintiff

1 fails to timely comply with this order, the Court shall dismiss this case without prejudice.”  
2 (ECF No. 5 at 2.) Thus, Plaintiff had adequate warning that dismissal would result from  
3 his noncompliance with the Court’s order to file an application to proceed *in forma*  
4 *pauperis* for non-prisoners or pay the full filing fee and file an updated address on or  
5 before February 24, 2017.

6 It is therefore ordered that this action is dismissed without prejudice based on  
7 Plaintiff’s failure to file an application to proceed *in forma pauperis* for non-prisoners or  
8 pay the full filing fee and file an updated address in compliance with this Court’s January  
9 25, 2017, order.

10 It is further ordered that the Clerk of Court enter judgment accordingly.

11 DATED THIS 7<sup>th</sup> day of March 2017.



12  
13 MIRANDA M. DU  
14 UNITED STATES DISTRICT JUDGE  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28